

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 12, 2014

Elisabeth A. Shumaker
Clerk of Court

In re:

BOBBY BRUCE WHITE,

Petitioner.

No. 14-3155
(D.C. Nos. 5:13-CV-03126-SAC &
5:14-CV-03004-SAC)
(D. Kan.)

ORDER

Before **BRISCOE**, Chief Judge, **BACHARACH** and **McHUGH**, Circuit Judges.

Petitioner Bobby Bruce White has filed a petition for a writ of mandamus asserting unwarranted delay by the district court in hearing and deciding two cases: a habeas corpus proceeding (D.C. No. 5:13-cv-03126-SAC) and a civil rights action (D.C. No. 5:14-cv-03004-SAC). We deny relief for the reasons explained below.

The habeas proceeding has now been resolved by the district court in an order appealed by Mr. White. Insofar as the mandamus petition concerns that proceeding, it is moot and must therefore be dismissed.

The civil rights action has been pending for only eight months—less than seven since Mr. White filed an amended complaint, and less than three since he filed a motion for summary judgment. Mr. White has not established the requisite “clear and indisputable right” to mandamus relief on the basis of relatively minor delays of this nature. *Compare Johnson v. Rogers*, 917 F.2d 1283, 1285 (10th Cir. 1990)

(granting writ of mandamus and directing district court to hear and decide habeas case that had been pending for over fourteen months without any justification other than docket congestion); *with Ballard v. Burrage*, 97 F.3d 382, 383 (10th Cir. 1996) (summarily denying mandamus where “case ha[d] not been pending for such an unreasonable time as to warrant mandamus relief”). We do note, however, that Mr. White’s in forma pauperis status entitled him to service of process by court or U.S. Marshal officers, *see Olsen v. Mapes*, 333 F.3d 1199, 1204 (10th Cir. 2003) (applying 28 U.S.C. § 1915(d) and Fed. R. Civ. P. 4(c)(3)), and this has not been accomplished despite a written request from Mr. White. Attention to that matter would undoubtedly further the expeditious resolution of the case.

Finally, the petition also includes a cryptic request to compel investigative and prosecutorial action by the U.S. Department of Justice and U.S. Attorney General regarding alleged illegal interference with the custody of a grandchild/ward of Mr. White. This request implicates the original mandamus jurisdiction of the district court under 28 U.S.C. § 1361 rather than our mandamus authority under 28 U.S.C. § 1651 and Fed. R. App. P. 21, and, in any event, the allegations are far too unclear to warrant judicial action in the nature of mandamus.

The petition is dismissed as it relates to D.C. No. 5:13-cv-03126-SAC, and denied as it relates to D.C. No. 5:14-cv-03004-SAC. Mr. White’s motion for leave to

proceed in forma pauperis is granted, and he is reminded of his obligation to continue making partial payments until the filing fee is paid in full.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", written in black ink on a light blue dotted background.

ELISABETH A. SHUMAKER, Clerk